

# Soval Solutions, LLC

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## Addressing the Rural Indigent Defense Service Provider Shortage in Nevada

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Soval Solutions, LLC  
1406 Veterans Drive, #212  
Omaha, NE 68022  
Dr. Mitchel N. Herian, Owner  
[mitch@sovalsolutions.com](mailto:mitch@sovalsolutions.com)  
402-651-6329

## Addressing the Rural Indigent Defense Service Provider Shortage in Nevada

In rural parts of the U.S., a shortage of attorneys is occurring. Consequently, counties and localities in rural parts of the nation will need to think creatively in order to address the legal needs of vulnerable populations in these areas. Nevada is no exception to this trend. Rural counties often have difficulty attracting the talent needed to provide legal services to those most in need. An upcoming report from the National Center for State Courts is likely to show that Nevada is facing a severe shortage of rural indigent defense providers.

To provide initial evidence regarding the shortage of attorneys in rural areas of the state, data from the American Bar Association (ABA) and the American Community Survey (ACS) were obtained. Specifically, a recent ABA report provided the number of attorneys per county throughout the U.S. in 2020. The ACS provides 5-year estimates on the total population of each county. Using these data sources, an attorney rate can be computed for each county. As Table 1 indicates that the rate of attorneys in rural areas of the state is much lower than in urban counties. Carson City has 6.26 attorneys per 1,000 residents; Washoe County has 3.56 attorneys per 1,000 residents; and Clark County has 2.73 attorneys per 1,000 residents. Most other rural counties lag far behind in the availability of attorneys for indigent defense, and other, work. More competitive pay structures may entice some newer attorneys to reside and work in rural areas and provide critical public services, including serving as indigent service providers.

<b>Table 1. Rate of Attorneys in Nevada Counties</b>			
<b>County</b>	<b>Attorneys</b>	<b>Population</b>	<b>Attorneys per 1,000 Residents</b>
Carson City	346	55,244	6.26
Churchill	27	24,606	1.10
Clark	6,084	2,228,866	2.73
Douglas	101	48,486	2.08
Elko	92	52,537	1.75
Esmeralda	1	1,030	0.97
Eureka	2	1,839	1.09
Humboldt	23	16,834	1.37
Lander	4	5,565	0.72
Lincoln	6	5,177	1.16
Lyon	32	55,667	0.57
Mineral	3	4,487	0.67
Nye	31	45,514	0.68
Pershing	8	6,591	1.21
Storey	4	4,086	0.98
Washoe	1,654	464,182	3.56
White Pine	17	9,570	1.78
Sources: American Bar Association, Profile of the Legal Profession, 2020; U.S. Census Bureau, American Community Survey			

It may also be the case that Nevada is not graduating a sufficient number of attorneys who practice in government and other public interest professions. Recent reports from the William S. Boyd School of

Law at UNLV show that the number of graduate entering such professions are quite low in relation to graduates entering other areas of practice. Table 2 below shows the number of Boyd School of Law graduates in relation to the number of students that reported employment in government and public interest careers. As shown in the far right hand column, the percentage of law school graduates employed in government/public interest careers was consistently above 10% from 2010 to 2015. Since that time, the number of graduates on those professions reached 10% only in 2017 and 2020.

From a workforce standpoint, the numbers suggest that Nevada is not producing a sufficient number of graduates on those fields to address potential worker shortages. According to the American Community Survey, the population in the State of Nevada grew about 16% from a population of 2.71 million in 2010, to a population of 3.14 million in 2021. Meanwhile, the total number of law school graduates in the state has not grown during the same time period, nor has the number or proportion of students entering government and public interest careers.

Even if the number of graduates and government/public interest employees had kept pace with population growth, it is not clear whether these employees are engaged in these professions in Nevada, or another state; the reports do not provide the geographic dispersion for post-graduation employment among Boyd School of Law graduates.

Year	Government	Public Interest	Total Graduates	Percent of Employed Graduates in Gov./Public Interest Positions
2010	12	7	136	14.0%
2011	10	1	106	10.4%
2012	10	2	115	10.4%
2013	10	2	101	11.9%
2014	8	6	107	13.1%
2015	12	2	106	13.2%
2016	7	2	101	8.9%
2017	13	4	114	14.9%
2018	7	1	93	8.6%
2019	7	3	109	9.2%
2020	8	4	114	10.5%
2021	6	5	142	7.7%

Data are from William S. Boyd School of Law, Reports to the American Bar Association:  
<https://law.unlv.edu/careers/employment-statistics>

To address rural indigent defense service shortages—and perhaps workers in other rural legal occupations—the State of Nevada needs to focus its efforts in three areas. First, identify those individuals within the state who are willing to move to rural locales and serve as indigent service providers. Second, it may be necessary to recruit workers from other states, or perhaps adopt some sort of reciprocity program that allows workers from out of state serve in Nevada in a limited capacity. Finally, programs designed to help localities attract workers are needed. This document examines various methods that might help Nevada accomplish these goals.

## **Rural Attorney Recruitment Programs**

In response to existing “Legal Deserts”, states have begun to develop programs to perhaps entice younger lawyers to move to rural areas to practice, or to build career pipelines into rural areas. These programs vary considerably in terms of the resources (e.g., compensation) provided to potential rural attorney recruits, and in terms of the technical supports provided to potential recruits.

In Nevada, there are several efforts designed to increase the pipeline of attorneys to rural areas. For example, the Nevada Department of Indigent Defense Services (DIDS) has developed a rural externship program that provide students with a \$6,500 stipend to participate in a 10 week program that introduces two Boy School of Law students per year to the practice of law in an organized public defender’s office in a rural area of the state. The two-year program is funded through a grant from the State Bar of Nevada. The first cohort complete the program in the Summer of 2022; the second cohort will complete the program in the Summer of 2023.<sup>1</sup>

Below, some of these programs are summarized. The document also puts forth a proposed program that might be employed in Nevada.

### **South Dakota Rural Attorney Recruitment Program**

South Dakota has perhaps the most widely-known program designed to foster attorney recruitment to rural areas. In 2013, the South Dakota Unified Judicial System and State Bar of South Dakota implemented the program. To join the program attorneys must enter into a contract with the Unified Judicial System (UJS), the State Bar and the eligible county or municipality in order to participate. Qualifying attorneys within the program will receive an incentive payment, payable in five equal annual installments, each payment equal to 90% of one year’s resident tuition and fees at the University of South Dakota Knudson School of Law, as determined on July 1, 2013. This amounts to \$12,513.60 per year, with a total benefit of \$62,568 for each attorney. Agree to practice full time as an attorney within an eligible county for a minimum of five consecutive years. As of the end of FY 2021, there had been 31 participants under contract in the program, with 14 active attorneys currently practicing in rural communities. As of the end of FY 2021, 10 of the 31 participants have graduated out of the program and 7 of the 10 graduates have stayed in their communities to continue practicing.

Rural Attorney Recruitment Program: <https://ujs.sd.gov/Attorneys/RuralRecruitment.aspx>

### **North Dakota Rural Attorney Recruitment Program**

North Dakota operates a rural recruitment program similar to that of South Dakota. To join the program, attorneys must agree to practice law full-time in the participating community for at least 5 consecutive years. Under the program, the state of North Dakota, the North Dakota State Bar Association and a participating community agree to pay an eligible attorney an incentive of \$45,000 to work full-time in the participating community and to live within close proximity to the community for those 5 years.

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<sup>1</sup> For more information, please see the article: “Stipend Takes Summer Interns on Road, Offers Real World Experience with a View,” in *Nevada Lawyer*.

Rural Attorney Recruitment Program: <https://www.ndcourts.gov/rural-attorney-recruitment-program>

### **Illinois State Bar Association**

To deal with rural attorney shortages in Illinois, the Illinois State Bar Association created two programs. First, the Rural Practice Summer Fellows program aims to connect law students with rural practitioners and to give them a taste of rural practice before they leave law school. The program includes a \$5,000 fellowship grant and mentoring. Second, the Rural Practice Associate Fellows program gives Associates, \$5,000 at the beginning of the fellowship and \$5,000 after the first year of the fellowship. Fellows participate in mentorship programs, and are provided with CLE, training, and other resources for rural practitioners.

Rural Practice Initiative: <https://www.isba.org/ibj/2021/05/updateontheisbasruralpracticeinitia>

### **Kansas – Washburn University**

The Rural Law Program at Washburn University is designed to offer student and externship opportunity where students are partnered with practicing attorneys or judges in rural areas to better understand relevant aspects of the legal profession in rural areas of the state. The program is limited to 26 counties in Northwestern Kansas, an area with low population density and a relatively small number of practicing attorneys. A grant from a non-profit covers the cost of six hours of externship credit, as well as \$5,000 to cover summer living expenses in the rural community. Several other programs involving Kansas colleges and universities are designed to enhance the legal pipeline into Washburn Law.

- Rural Law Program: <https://www.washburnlaw.edu/practicalexperience/rural/index.html>

### **Montana Legal Services Association**

The Montana Legal Services Association has developed the Rural Incubator Project for Lawyers. The program is as a 12-month program designed to train and support attorneys as they develop new solo or small firm law practices. One critical aspect of the program is its focus on linking low-income residents with affordable legal services in rural and tribal areas of the state. Participants are expected to provide 25 pro bono hours and 225 reduced rate hours in exchange for: training and assistance with business and client development; training on substantive law, business skills, and law practice management from experienced legal practitioners and jurists; hands-on legal experience and a valuable understanding of the legal aid community and legal service delivery systems that work; and the opportunity to collaborate with peers and other successful practitioners. Fellows in the program

- Rural Incubator Project for Lawyers: <https://www.mtlsa.org/rural-incubator-project-for-lawyers/>

## **Colorado**

Colorado faces many of the same challenges as other states in retaining attorneys in rural areas. The vast majority of attorneys practice law in urban areas of the state, leaving vast parts of the state without adequate representation, particularly for low-income individuals and individuals for whom indigent defense services are needed. In response, a variety of programs have been developed in Colorado. To understand the problem, access to justice committees have been developed throughout the state. Legal clinics where individuals can obtain legal advice are held regularly. Colorado has recently placed a focus on virtual legal service provision for attorneys and clients in rural areas. Mentorship has been identified as a key aspect of attracting and retaining attorneys in rural parts of Colorado.

- Colorado Lawyer - <https://cl.cobar.org/departments/rural-access-to-justice-through-mentoring/>

## **Proposed Nevada Pipeline Plan**

To offset rural attorney shortages in Nevada, particularly among rural indigent defense providers, Nevada proposes developing a program that would compensate Associate attorneys who agree to practice criminal defense work in rural counties of the state. Specifically, the program would be designed to provide new law school graduates an incentive to practice in Nevada counties with fewer than 100,000 residents. Two potential programs are envisioned.

First, is a two-year program for new law school graduates who set up practice, or join an existing firm, in a county with fewer than 100,000 residents. Compensation of \$1,000 per month would supplement regular salary and pay from defense practice. Further, upon graduation from law school and meeting minimum requirements for the program, candidates would receive \$1,000 toward registration for the Bar Exam for the Nevada State Bar. Candidates would also receive up to \$4,000 toward participation in a BARBRI bar exam preparation course. In total, candidates could receive up to \$29,000 in support over a 24-month period.

Second is a more extensive program that lasts five years. As seen below, other states have developed much more extensive programs designed to increase the number of practicing attorneys in rural areas where population density is low and where the number of practicing attorneys is also low. South Dakota and North Dakota, in particular, have developed comprehensive five-year programs. Evidence has suggested that the South Dakota program has had a positive impact on the number of attorneys working in rural areas of the state. A five-year program would also provide a \$1,000/month stipend above and beyond salary and other compensation. Candidates would receive \$1,000 toward registration for the Bar Exam for the Nevada State Bar and would also receive up to \$4,000 toward participation in a BARBRI bar exam preparation course. The total cost of this program would be \$65,000 per participant. This cost would be similar to the cost of the South Dakota program.

The cost of either program is an obvious hurdle to the implementation of each. In other states, the cost of programming is borne by some combination of the legislature, the courts, the state bar association, non-profit organizations, and municipalities or other local governments. In either plan proposed for Nevada, local governments would be encouraged to contribute to stipend payments, or to provide in-kind contributions such as office space or some form of administrative support.

## **Enhance Ability for DIDS in its Recruiting Efforts**

One of the aspects perhaps limiting the ability of Nevada DIDS to recruit new law school graduates to rural areas to provide indigent defense services is its lack of ability to recruit students on law campuses. At the Boyd School of Law at UNLV, in particular, DIDS has the ability to attend recruitment functions, but does not have the ability to spend state dollars on food, beverages, and other items to attract students to a booth hosted by DIDS, or to a specific meeting hosted by DIDS. The ability to spend such dollars would provide DIDS the opportunity to more effectively interact with students and communicate the importance of providing indigent defense services in rural parts of Nevada, as well as communicate the business and quality of life opportunities that exist in rural parts of the state. Below are several recommendations that would help DIDS better identify and recruit talent to serve in indigent defense service roles in rural parts of the state.

### *1. Travel Budget for On-Campus Recruitment*

To recruit law students for work in rural parts of Nevada it may be necessary to reach out to law students from neighboring states. However, the ability of DIDS to recruit non-Nevada law students for externships or other opportunities post-graduation is hampered by its lack of a travel budget for such purposes. Law schools such as the Blewett School of Law (Montana), the J. Reuben Clark Law School (Utah), Lewis & Clark College of Law (Oregon), the S.J. Quinney College of Law (Utah), the University of Idaho College of Law, and Willamette University College of Law (Oregon) may provide fertile recruiting grounds for students interested in practicing law in rural areas of Nevada.

Funding for travel to these law schools will be used to recruit students to participate in the Nevada DIDS pipeline program. Specifically, Second and Third Year law students will be targeted for participation in the program. First and Second Year students from such schools can be recruited for participation in DIDS externship programs.

### *2. Budget to Attend Equal Justice Works Conference and Career Fair*

Equal Justice Works is a non-profit organization decided to connect law student and law school professionals with opportunities to serve the public interest. The annual conference and career fair allows public interest legal service organizations such as DIDS to recruit law students to serve in public interest careers. Students from across the country attend the event providing a unique opportunity for DIDS to recruit from law schools from across the nation.

In order to recruit students at the event, organizations must register as an employer. The conference takes place online using a virtual format. DIDS requests spending authority to register as an employer and have DIDS personnel attend the virtual event each year.

### *3. Host Fund Authority*

One of the most logical places to recruit new talent to serve in rural areas of the state is the Boyd School of Law at UNLV. Over the years, DIDS has been invited to attend local events on campus so that the organization can communicate its role and attempt to recruit students to serve in rural parts of the state. However, DIDS has had some difficulty attracting a significant number of students to its events. Anecdotal evidence suggests that the inability of DIDS to provide food and drink to students has limited



its ability to attract students to meetings. As a result, DIDS has faced challenges in recruiting students to serve as indigent defense service providers in rural Nevada.

DIDS seeks the creation of a host fund so that DIDS personnel are able to purchase food and beverages when they visit Boy School of Law, and perhaps other campuses. The creation of a host fund, and the resulting purchase of food and beverage for potential recruits, will allow DIDS to achieve greater visibility among students when it visits law schools in the region.

### **Bar Reciprocity**

Recently, the New Hampshire Supreme Court issued an order that was designed to address the backlog of indigent criminal defense cases in the state. The order waives mandatory continuing legal education requirements and the filing of a Trust Account Compliance form for Inactive Status attorneys who elect Limited Active Status with the New Hampshire Bar Association. The goal is to make it less cumbersome for attorneys with Limited Active Status to accept indigent criminal defense cases.

It is not clear whether such changes to bar standing in Nevada would affect the likelihood of limited active attorneys accepting indigent criminal defense cases. However, the actions in New Hampshire provide some evidence that actions taken by a state Supreme Court or by a state bar can have the potential to impact attorney shortages in critical areas such as indigent criminal defense services.

In Nevada, one potential rule change might involve the concept of reciprocity. Currently, the State Bar of Nevada has no formal reciprocity agreements with other states. Given the current shortage of indigent defense service providers in rural Nevada Counties, it may be beneficial for the relevant entities to explore how reciprocity might provide an opportunity for attorneys from bordering states (California, Idaho, Oregon, and Utah) to provide indigent defense services to defendants in Nevada Counties.